

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GREGORY KLINE and CHERRIE KLINE,)
Plaintiffs,)
vs) Civil Action No. 13-513
ZIMMER HOLDINGS, INC., et al.,)
Defendants.)

O R D E R

AND NOW, this 27th day of June, 2013, after the plaintiffs, Gregory and Cherrie Kline, filed an action in the above-captioned case, and after a partial motion to dismiss was submitted by the defendants, Zimmer Holdings, Inc., Zimmer, Inc. and Zimmer US, Inc., and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties a period of time after being served with a copy to file written objections thereto, and no objections having been filed, and upon independent review of the motion and the record, and upon consideration of the Magistrate Judge's Report and Recommendation (ECF No. 20), which is adopted as the opinion of this Court,

IT IS ORDERED that the partial motion to dismiss filed on behalf of the defendants (ECF No. 12), treated as a partial motion for judgment on the pleadings, is granted in part and denied in part as follows: as to the strict liability claims in Count II, the motion is granted with respect to plaintiffs' design defect and failure to warn claims, but denied with respect to plaintiffs' manufacturing defect claim; as to the breach of implied warranties claims in Count III, the motion is granted with respect to plaintiffs' claim of breach of the implied warranty of fitness for a particular purpose and the claim of breach of implied warranty of merchantability based

upon the design defect and failure to warn claims, but denied with respect to plaintiffs' claim of breach of the implied warranty of merchantability based upon a manufacturing defect; as to the breach of express warranties claims in Count IV, the motion is granted.

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge